IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7866 OF 2007

Mr.Rajesh Malhotra and anr. ...Petitioners

Versus

CCI Chambers CHS Ltd ....Respondents

Mr.Vineet Naik, for the petitioners.

Mr.Prashant Naik for the respondents.

CORAM: S.C.DHARMADHIKARI, J.

13th December, 2007.

P.C. :

1. This is a dispute between the petitioner member and a Co-operative Housing society which is respondent before me. It appears that the Co-operative Housing Society had filed a dispute in the Trial Court and sought mandatory direction to the petitioner to deposit Rs.10,11,557.55/-.

2. The Application for interim relief in this

mandatory form came to be rejected and the Respondent society appealed to the Co-operative Court which allowed the Appeal and has directed the petitioner to deposit the above sum. This is how this petition under Article 227 of the Constitution of India.

3. I have heard this petition at length.

4. My attention is invited by Shri. Naik to the fact that the petitioner applied for interim orders before this court and on 26.10.2007 the following order came to be passed.

> ". Notice before admission returnable in six weeks. Till then ad-interim stay in terms of prayer clause (b), subject to the condition that petitioners deposits a sum of Rs.10,11,557.55/- by returnable date, in this court.

5. Mr.Naik states that the petitioner has not complied with this order,inasmuch as, six weeks have lapsed but same is not deposited.

6. After having heard Shri Vineet Naik appearing for the petitioner and Shri Prashant Naik appearing for the

Respondent and perusing with their assistance the impugned interim order, to my mind, the observation at this prima-facie stage that the recovery from the petitioner is towards property taxes which are payable to the Municipal Corporation cannot be said to be based on no material. The said finding at this prima-facie stage cannot be termed as perverse, inasmcuh as, the Society cannot be expcted to take up a individual dispute with the local body. The property taxes are demanded by BMC. The Bills are raised and the sum is known to the members. Prima-facie, there is a remedy available to the petitioners to dispute the property taxes. In such circumstances, the order under challenge cannot be termed as perverse or vitiated by any error so as to call for any interference under Article 227 of the Constitution of India. Petition is dismissed.

7. However, if the petitioners comply with the directions of the lower Appellate court within a period of four weeks from today, then, the Society should not take coercive measures until then. Needless to state, that all observations by the lower Appellate

Court are tentative and prima-facie. They shall not influence the Trial Court while trying the dispute on merits and in accordance with law. Payments and deposits are without prejudice to the rights and contentions of the parties. Civil Application stands disposed off in the light of the above order. No order as to costs.

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